

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Corwin	Team: Squad #10	CCRB Case #: 201905883	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 07/06/2019 11:00 AM	Location of Incident: Inside § 87(2)(b)	Precinct: 104	18 Mo. SOL 1/6/2021	EO SOL 8/23/2021	
Date/Time CV Reported Sun, 07/07/2019 10:35 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 07/07/2019 10:35 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POF Erica Rosalez	15910	953340	104 PCT
2. POF Shuyi Lin	03656	954068	104 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Ricottone	14861	939306	104 PCT
2. SGT Efrain Perez	00329	937268	C R C

Officer(s)	Allegation	Investigator Recommendation
A.POF Shuyi Lin	Abuse: Police Officer Shuyi Lin forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)
B.POF Erica Rosalez	Abuse: Police Officer Erica Rosalez forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)
C.POF Shuyi Lin	Force: Police Officer Shuyi Lin used physical force against § 87(2)(b)	§ 87(2)(b)
D.POF Erica Rosalez	Force: Police Officer Erica Rosalez used physical force against § 87(2)(b)	§ 87(2)(b)
E.POF Shuyi Lin	Abuse: Police Officer Shuyi Lin searched § 87(2)(b)	§ 87(2)(b)

Case Summary

On July 07, 2019, § 87(2)(b) filed the following complaint online. It was received at the CCRB on July 08, 2019.

At approximately 11:00 a.m. on July 06, 2019, Police Officer Erica Rosalez and Police Officer Shuyi Lin, both of the 104th Precinct responded to § 87(2)(b) in Queens in response to a 911 call § 87(2)(b) made alleging that her neighbor had glued soil to her door. PO Rosalez and PO Lin spoke with § 87(2)(b) inside her home for approximately 20 minutes and also spoke with § 87(2)(b)'s mother, § 87(2)(b) before they decided to call EMS to assess § 87(2)(b). Two EMTs arrived and determined that § 87(2)(b) needed to go to the hospital. PO Rosalez and PO Lin told § 87(2)(b) that she had to go to the hospital (**Allegation A and Allegation B: Abuse of Authority: Forcible removal to the hospital:** § 87(2)(g) § 87(2)(b) told them she did not want to go, and PO Rosalez and PO Lin grabbed § 87(2)(b) arms and took her to the ground to handcuff her (**Allegation C and Allegation D: Force: Physical Force:** § 87(2)(g) PO Lin then reached into § 87(2)(b)'s handbag, took her wallet out of her bag, and took her ID out of the wallet (**Allegation E: Abuse of Authority: Search [of person]:** § 87(2)(g) § 87(2)(b). The officers then walked with § 87(2)(b) to an ambulance outside and brought her to § 87(2)(b).

The CCRB obtained BWC of the incident from PO Lin (**Board Review 01**) and prepared a detailed summary of the video (**Board Review 02**). The CCRB also received BWC footage from PO Rosalez (**Board Review 03**) and prepared a detailed summary of it (**Board Review 04**).

Findings and Recommendations

Allegation A: Abuse of Authority: Police Officer Shuyi Lin forcibly removed § 87(2)(b) to the hospital.

Allegation B: Abuse of Authority: Police Officer Erica Rosalez forcibly removed § 87(2)(b) to the hospital.

§ 87(2)(b) provided a statement to the CCRB on July 31, 2019 (**Board Review 05**). § 87(2)(b)'s mother, § 87(2)(b) provided a statement over the phone on October (**Board Review 06**). PO Lin and PO Rosalez provided statements at the CCRB on November 26, 2019 (**Board Review 07** and **Board Review 08**).

It was undisputed that PO Lin and PO Rosalez spoke with § 87(2)(b) in her home for approximately twenty minutes, before two EMTs arrived at the location. The officers then put § 87(2)(b) in handcuffs and removed her to § 87(2)(b) in Queens.

Throughout PO Rosalez's BWC footage (**Board Review 03**), § 87(2)(b) talks about seemingly disconnected topics (the mortgage on her home, missing clothing and jewelry, and her neighbors injuring her dog). She also can be seen compulsively picking at the skin on her hands. At 5:45 in the footage, one of the EMTs tells § 87(2)(b) that they're going to take her to the hospital. PO Rosalez's BWC covers the moment the EMTs arrive up until this point, and at no point do either PO Rosalez or PO Lin tell the EMTs that § 87(2)(b) needed to go to the hospital. § 87(2)(g)

§ 87(2)(b) stated that both PO Lin and PO Rosalez, as well as the EMTs told her she needed to go to the hospital.

§ 87(2)(b)'s mother, § 87(2)(b) was upstairs in a separate apartment for most of the incident. She stated that PO Lin and PO Rosalez asked § 87(2)(b) some questions about § 87(2)(b).

§ 87(2)(b)'s well-being. § 87(2)(b) told them that § 87(2)(b) had been "nervous" since her son had passed away (in 2015). When she walked downstairs, minutes later, PO Lin and PO Rosalez were putting handcuffs on § 87(2)(b). The officers did not tell § 87(2)(b) that they were going to take § 87(2)(b) to the hospital and did not explain to her why § 87(2)(b) was going to the hospital.

PO Rosalez stated that she and PO Lin decided to call EMS to evaluate § 87(2)(b). The factors that led to them calling EMS were that they believed § 87(2)(b) might be hallucinating because she described seeing one man in a number of locations, stated her clothes were disappearing, and called police to complain about soil on her door, that the officers did not observe. PO Rosalez also spoke to § 87(2)(b)'s mother, who told her that § 87(2)(b) had not been sleeping. Additionally, § 87(2)(b) appeared to have irritated skin that she was picking at.

Two EMTs arrived and PO Rosalez relayed this information to her. The EMTs asked § 87(2)(b) a series of questions, but PO Rosalez could not recall what these questions were. When asked who made the decision to take § 87(2)(b) to the hospital, PO Rosalez stated that the EMTs made the decision to take her to the hospital. They did not directly relay that information to PO Rosalez, but PO Rosalez heard them tell § 87(2)(b) that she needed to see a doctor. § 87(2)(b) said she did not want to go to the hospital in response to this.

PO Lin § 87(2)(g) added that § 87(2)(b) repeatedly refused to go to the hospital, so the EMTs tried to convince her by saying they could get her skin condition checked out or that she could talk to someone that could give her help. § 87(2)(b) refused and then PO Lin said, "Walk with them. Otherwise we are going to have to take you to the ambulance."

The AIDED report prepared by PO Rosalez (**Board Review 09**) states that § 87(2)(b) was removed to the hospital because she was unable to care for herself and was suffering from anxiety and hallucinations.

Patrol Guide Procedure 216-01 states that uniformed members of the service shall cooperate with ambulance/hospital personnel in every reasonable manner (**Board Review 10**).

§ 87(2)(g)

Allegation C: Abuse of Authority: Police Officer Shuyi Lin used physical force against § 87(2)(b).

Allegation D: Abuse of Authority: Police Officer Erica Rosalez used physical force against § 87(2)(b).

At 16:15 in PO Rosalez's BWC (**Board Review 03**), § 87(2)(b) says she will not go to the hospital. PO Lin then grabs § 87(2)(b)'s right arm and PO Rosalez puts her hand on § 87(2)(b)'s shoulder. § 87(2)(b) tenses her body up and screams. PO Lin tries to put a handcuff on § 87(2)(b)'s right arm, but § 87(2)(b) pulls the arm away and says she is going to call 311. Between 17:20 and 18:35, PO Lin and PO Rosalez physically struggle with § 87(2)(b). Both have a hold of one of § 87(2)(b)'s arms and try to maneuver § 87(2)(b)'s arms so that they can handcuff her. § 87(2)(b) tenses her arms up and resists being handcuffed. At 18:05, PO Lin slowly forces § 87(2)(b) to the ground, though § 87(2)(b) does not appear to make hard contact with the ground. The officers then get the handcuffs on § 87(2)(b) who tells them she

will go to the hospital. § 87(2)(g)

§ 87(2)(b) stated that she did not want to go to the hospital and one of the EMTs told her that either she would go with them or they were going to take her. PO Lin then said, “let’s go” and grabbed § 87(2)(b)’s right arm just above her wrist. She then pulled § 87(2)(b)’s arm behind her back and then pushed her forward while still holding onto § 87(2)(b)’s arm. PO Lin twisted § 87(2)(b)’s arm and § 87(2)(b) needed to maneuver her body because she thought her arm was going to break. § 87(2)(b) did not fight back or resist, aside from saying she did not want to go. At this point, § 87(2)(b) walked downstairs and told the officers to stop. PO Lin then got a handcuff on one of her hands and told PO Rosalez, “I got one hand.” Then PO Lin grabbed her other hand and put handcuffs on § 87(2)(b).

§ 87(2)(b) stated that after speaking with PO Lin and PO Rosalez, she went downstairs to check up on what was going on. When § 87(2)(b) got down to the first floor PO Lin and PO Rosalez were attempting to put handcuffs on § 87(2)(b). At first, § 87(2)(b) only had one handcuff on and she was resisting slightly and said she did not want to be handcuffed. PO Lin and PO Rosalez then forced the second handcuff onto § 87(2)(b). § 87(2)(b) told the officers that she would go with them willingly, but the officers continued to hold of her arms until they got the second handcuff on. The investigation asked § 87(2)(b) how § 87(2)(b) was resisting, § 87(2)(b) could be heard speaking to her through the phone and § 87(2)(b) did not elaborate.

PO Rosalez stated that § 87(2)(b) repeatedly refused to cooperate when the EMTs told her she was going to go to the hospital. PO Rosalez then told § 87(2)(b) that she needed to go to the hospital more than five times and § 87(2)(b) said no repeatedly. PO Rosalez told § 87(2)(b) that she had to go and if she did not want to go they would handcuff her and take her to the hospital. § 87(2)(b) continued to not cooperate and so PO Rosalez and PO Lin grabbed her arms. When PO Rosalez and PO Lin tried to handcuff § 87(2)(b) she tensed up and held one of her hands close to the front of her body, so that the officers did not have access to that hand. § 87(2)(b) also tried to sit down in a chair as the officers tried to get her hands. PO Rosalez and PO Lin got one of § 87(2)(b)’s arms in handcuffs, but she was still holding the other hand close to her body. PO Rosalez and PO Lin tried to move the other hand away from § 87(2)(b)’s body, but she tensed up, so they moved her away from the table and brought § 87(2)(b) to the ground face down. § 87(2)(b) knees were the first part of her body to touch the floor. Once § 87(2)(b) was on the floor, PO Rosalez and PO Lin were able to grab § 87(2)(b)’s hand and finish putting § 87(2)(b) into handcuffs. § 87(2)(b) did not complain about any pain or injuries.

§ 87(2)(g) PO Lin added that she told § 87(2)(b) that if she did not voluntarily go, they would have to handcuff her and take her. PO Lin also said that § 87(2)(b) was not fully taken to the ground, but only kneeling on the ground.

By all accounts, § 87(2)(b) repeatedly refused to cooperate with going to the hospital and when PO Lin and PO Rosalez tried to handcuff her, she tensed her body and moved her arms in a way that prevented PO Lin and PO Rosalez from handcuffing her. It was also undisputed that PO Lin and PO Rosalez responded to this resistance by grabbing § 87(2)(b)’s arms and taking her to the ground, but did not use any additional force, aside from holding her, once § 87(2)(b) was handcuffed.

Patrol Guide Procedure 221-01 (Board Review 11) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all

circumstances, any application of force must be reasonable under the circumstances. In determining whether the use of force is reasonable members of service should consider the following:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject's violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

§ 87(2)(g)

Allegation E: Abuse of Authority: Police Officer Shuyi Lin searched § 87(2)(b)

§ 87(2)(b) stated that PO Lin told PO Rosalez that they should take § 87(2)(b)'s purse with them to the hospital. PO Lin then opened the purse and took § 87(2)(b)'s ID out of the bag. She did not ask § 87(2)(b) to look in the bag. § 87(2)(b) told them that she did not want them to take her purse and she told her mother to take her purse. PO Lin then handed § 87(2)(b) the purse.

§ 87(2)(b) stated that one of the officers asked for some kind of ID. § 87(2)(b) told § 87(2)(b) that her ID was in her purse. Either PO Lin or PO Rosalez then opened § 87(2)(b)'s bag, and took out a purse, which she opened and took § 87(2)(b)'s ID out.

PO Lin stated that initially she asked § 87(2)(b) for her ID, and § 87(2)(b) said she would not provide it. PO Lin knew that § 87(2)(b) ID was in her purse because she had taken it out previously in the incident. PO Lin told § 87(2)(b) mother to get the ID, which she did and then handed it to PO Lin. After being shown her BWC, PO Lin acknowledged that she had taken § 87(2)(b)'s wallet out of her bag and then took § 87(2)(b)'s ID out of the wallet. She stated that she did so because she needed § 87(2)(b)'s ID to take her to the hospital and EMS had asked for § 87(2)(b)'s ID. PO Lin stated that aside from obtaining § 87(2)(b)'s ID, she had no reason to go into her bag or wallet

PO Rosalez stated that the EMTs told her that they needed § 87(2)(b)'s ID or insurance card. PO Rosalez could not remember how § 87(2)(b)'s ID was obtained. PO Rosalez did not remember if PO Lin went into § 87(2)(b)'s purse to obtain the ID.

At 19:20 of PO Lin's BWC (**Board Review 01**), PO Lin can be heard saying, "get her...She has her ID in her purse." § 87(2)(b) yells, "No, don't. Don't take my stuff." PO Lin tells the EMTs that the ID is in § 87(2)(b)'s wallet. One of the EMTs asks § 87(2)(b) if she will take § 87(2)(b)'s ID. After § 87(2)(b) does not take the ID out, PO Lin walks over, reaches into the bag,

and takes § 87(2)(b)'s wallet out. PO Lin unzips the wallet and takes § 87(2)(b)'s ID out of the wallet.

Patrol Guide Procedure 216-02, which is entitled Preparation of Aided Report, states that if a person is unidentified and hospitalized, officers should “enter the hospital admission number under caption ‘Admission #: If unidentified and hospitalized’ (**Board Review 12**).

The Court of Appeals of New York held in People v. Reid, 24 NY3d 615 (2014), that a search must be incident to an actual arrest and not probable cause to an arrest that might have happened, but did not. (**Board Review 13**).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 14**).
- PO Lin has been a member of service for seven years and was the subject in one other CCRB complaint, which was mediated.
- PO Rosalez has been a member of service for seven years and this is the first CCRB complaint in which she is a subject.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation
- As of April 27, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (**Board review 15**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 10

Investigator: Matthew Corwin Inv. Matthew Corwin 5/1/2020
Signature Print Title & Name Date

Squad Leader: Eric Rigie IM Eric Rigie 5/15/2020
Signature Print Title & Name Date

Reviewer: _____

CCRB Case # 201905883

Signature

Print Title & Name

Date